U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23479568

Date: JAN. 6, 2023

Appeal of New York City, New York Field Office Decision

Form N-600K, Application for a Certificate of Citizenship Under Section 322

The Applicant's naturalized U.S. citizen grandmother[1] seeks a Certificate of Citizenship on the Applicant's behalf under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The Director of the New York City, New York Field Office denied the application, concluding that the record did not establish, as required that either the Applicant's U.S. citizen grandmother or grandfather had the five-year physical presence in the United States mandated by section 322 of the Act. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant submits additional evidence and reassert eligibility.

Upon de novo review, we conclude that the sole reason for the denial of the Form N-600K has been overcome. We will therefore return the matter to the Director for further proceedings and the entry of a new decision consistent with our opinion below.

I. LAW

The record reflects that the Applicant was born abroad to married parents in 2006. His mother is a U.S.-born citizen of the United States, and his father is a citizen of Ireland. The Applicant's maternal grandmother, who was born in Ireland in [redacted]1945 naturalized as a U.S. citizen in 1968. She represented on the Form N-600K, that the Applicant is currently residing in Ireland with both his parents.

Section 322 of the Act, as amended by the Child Citizenship Act (CCA) of 2000 (Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000)), applies to children of U.S. citizens born and residing outside of the United States. Section 322(a) of the Act provides, in relevant part

[1] Although the Applicant's grandmother signed the Form N-600K, the record reflects the Applicant's U.S. citizen mother is living. The filing was therefore improper, as Form N-600K may not be filed by any person other than a U.S. citizen parent of the child, unless that parent has died. *See* 8 C.F.R. § 322.3(a) (providing that a U.S. citizen grandparent citizen may submit the application only if the child's U.S. citizen parent is deceased); *see also* Instructions for Form N-600K, https://www.uscis.gov/n-600k. Nevertheless, because U.S. Citizenship and Immigration Services (USCIS) accepted the instant Form N-600K for processing, we will consider the merits of the application on appeal.

that a parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States, and the Secretary of Homeland Security shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Secretary, that the following conditions have been fulfilled:

> (1) At least one parent . . . is a citizen of the United States, whether by birth or naturalization.
>
> (2) The United States citizen parent--
>
> > (A) has . . . been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or
> >
> > (B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.
>
> (3) The child is under the age of eighteen years.
>
> (4) The child is residing outside of the United States in the legal and physical custody of the [citizen parent] . . . .
>
> (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.
>
> (b) Upon approval of the application (which may be filed from abroad) and . . . upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the [Secretary] with a certificate of citizenship.

Because the Applicant was born abroad, he is presumed to be a noncitizen and bears the burden of establishing eligibility for a Certificate of Citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must demonstrate that his claims are "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

II. ANALYSIS

There is no dispute that the Applicant has already satisfied some of the eligibility criteria for issuance of a Certificate of Citizenship under section 322 of the Act, as the evidence, including copies of U.S. passports, birth, and marriage certificates, shows that he has a U.S. citizen parent, that he is currently

under 18 years of age, and that he is residing in his U.S. citizen mother's legal and physical custody outside of the United States. The only issue on appeal is whether Applicant's U.S. citizen grandmother established by a preponderance of evidence that she (or, in the alternative the Applicant's U.S. citizen grandfather) was physically present in the United States for at least five years, and that two of those years were after her 14th birthday in [redacted] 1959.[2]

As stated, the Director determined generally that the evidence was insufficient to show that the grandmother met this requirement and denied the application. The Applicant has overcome this determination on appeal.

In a previously submitted declaration, the grandmother stated in part that she came to the United States in 1961 and thereafter resided and worked in New York for an insurance company; in 1966 she married the Applicant's grandfather, and their children (including the Applicant's mother) were born in New York in 1967, 1969, and 1971. The grandmother stated that she continued to live there until 1977. The evidence in support of those statements includes the grandparents' marriage certificate, which reflects that they were married in New York in [redacted] 1966, and the grandmother's 1962-1974 Social Security Earnings record, which shows that she was employed and reported income in the United States every year in this 12-year period. In addition, the record includes the New York birth and baptismal certificates of the grandmother's children, as well as her Certificate of Naturalization which reflects that she continued to reside in New York when she became a U.S. citizen in 1968. In addition, the record contains affidavits attesting to the grandmother's physical presence in the United States. In one affidavit, the grandmother's close friend and co-worker attests that she and the grandmother lived in the same house in New York and worked for the same company from 1961 until 1966, and that she was a maid of honor at the grandmother's 1966 wedding. Another affiant, the grandparents' friend and neighbor, states that he met the grandmother in 1964, and confirms that the grandmother lived and was physically present in New York until at least 1969. The third affiant attests that his parents and the Applicant's grandparents were close friends and neighbors, that they would often get together to celebrate birthdays and holidays, and that the Applicant's grandmother regularly babysat him and his siblings within the 1965-1976 period.

This evidence, considered in the aggregate, is sufficient to show that the Applicant's U.S. citizen grandmother resided in the United States from at least 1961 through 1976, and that during this period she "more likely than not" accumulated five years of physical presence in the United States with at least two years after her 14th birthday. The Applicant therefore satisfies the condition in section 322(a)(2)(B) of the Act regarding the U.S. citizen grandparent's prior physical presence in the United States.[3]

Section 322(a)(5) of the Act requires the Applicant to be temporarily present in the United States pursuant to a lawful admission to receive a Certificate of Citizenship. The regulation at 8 C.F.R. § 322.4 further provides that the U.S. citizen parent and the child must appear in person before a USCIS officer for examination on the application under section 322 of the Act. Because the record

[2] The Applicant does not claim that his U.S. citizen mother satisfies the physical presence requirement.

[3] Accordingly, we need not address whether the evidence is also sufficient to show that the Applicant's U.S. citizen grandfather meets the U.S. physical presence requirement.

indicates that the Applicant and his mother are currently in Ireland, we will remand the matter to the Director to schedule an interview on the Form N-600K.

III. CONCLUSION

The preponderance of the evidence is sufficient to show that the Applicant has a U.S. citizen mother, and that his maternal U.S. citizen grandmother was physically present in the United States for a period or periods totaling not less than five years, at least two of which were after her 14th birthday. The record also reflects that the Applicant is currently residing outside the United States in the legal and physical custody of his U.S. citizen mother. However, as the Applicant has not been scheduled for an interview before a USCIS officer, he has not had an opportunity to fulfill the remaining condition for issuance of Certificate of Citizenship under section 322 of the Act, which requires his temporary presence in the United States pursuant to a lawful admission, and maintenance of such status. We will therefore return the matter to the Director to schedule an interview on the Form N-600K.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.